

RULES AND PUBLIC POLICY COMMITTEE

DATE: May 3, 2010

CALLED TO ORDER: 5:37 p.m.

ADJOURNED: 8:15 p.m.

ATTENDANCE

ATTENDING MEMBERS

Robert Lutz, Chairman
Bob Cockrum
Monroe Gray
Angela Mansfield
Michael McQuillen
Angel Rivera
Joanne Sanders
Ryan Vaughn

ABSENT MEMBERS

AGENDA

PROPOSAL NO. 130, 2010 - approves the Mayor's establishment of a charter school, "The Excel Center," by issuing a charter to Goodwill Education Initiatives, Inc.
"Do Pass" Vote: 7-1

PRESENTATION ON PROPOSAL TO TRANSFER THE WATER AND WASTEWATER SYSTEMS TO CITIZENS ENERGY GROUP - Chris Cotterill, Chief of Staff, Mayor's Office and Carey Lykins, President and CEO of Citizens Energy Group

PROPOSAL NO. 131, 2010 - authorizes the transfer of the waterworks and the sewage works of the City of Indianapolis to Citizens Energy Group
"Amended"/No further Action Taken

PROPOSAL NO. 132, 2010 - authorizes the issuance and sale of revenue bonds to procure funds to be applied to the costs of the construction, renovation, rehabilitation and installation of improvements to the public ways, including roads, streets, alleys, trails, sidewalks and other public facilities, appropriating the proceeds derived from the sale of such bonds, modifying the amount of payments in lieu of taxes payable by the sanitary district
"Amended"/No further Action Taken

RULES AND PUBLIC POLICY COMMITTEE

The Rules and Public Policy Committee of the City-County Council met on Monday, May 3, 2010. Chairman Robert Lutz called the meeting to order at 5:37 p.m. with the following members present: Bob Cockrum, Monroe Gray, Michael McQuillen, Joanne Sanders and Ryan Vaughn. Angela Mansfield and Angel Rivera arrived shortly thereafter. Councillors Mike Speedy, Mary Moriarty Adams and Jackie Nytes were also in attendance. General Counsel Robert Elrod and Chief Financial Officer James Steele represented Council staff.

Chairman Lutz asked all Councillors to introduce themselves and indicate which portion of the County they represent.

[Clerk's Note: Councillor Mansfield arrived at 5:39 p.m.]

PROPOSAL NO. 130, 2010 - approves the Mayor's establishment of a charter school, "The Excel Center," by issuing a charter to Goodwill Education Initiatives, Inc.

Karega Rausch, director of the Office of Education and Innovation, Mayor's Office, stated that the charter school approval process takes about three and a half months and he will not go into detail about that process, as he has presented that to the committee several times in the past, but he is available for questions if there are any. He introduced, Scott Bess, Chief Operating Officer for Goodwill Education Initiatives, who will essentially serve as the superintendent for the new charter; and Gina DelSanto, Ph.D., a board member for Goodwill Education Initiatives and Senior Deputy Commissioner for Policy, Strategy and Performance for the Indiana Department of Workforce Development, who will serve as a board member for the new charter.

Mr. Bess stated that Goodwill Industries has been a good community partner in Indianapolis for some time, and has a commitment to helping people find and retain jobs in the community, particularly those citizens with barriers to employment. In this economic climate, not having a high school diploma is one of the biggest barriers people face, and that is the impetus for this initiative. Ms. DelSanto stated that two of the deepest strengths The Excel Center will bring to the educational environment in Marion County is a model that provides for "any time, any place, any pace" learning and intensive counseling for a group of students who are fragile learners. She said that classes will be held at Goodwill headquarters, and other learning sites will be added as they become necessary. Students can study at an hour that is conducive to their particular lifestyle. She said that young learners learn at random paces, and often a standardized curriculum is not in their best interest. Although this is a rare model within the educational community, she believes it is emergent and that The Excel Center will

become a national model on that front, and they will begin to see more and more of these types of initiatives. She said that these fragile learners often need more coaching, support and follow-up, which Excel aims to provide. She congratulated the Mayor, Goodwill Industries and this Council for embracing such a concept and taking a brave step in a positive direction.

Mr. Bess said that over 80,000 individuals in Indianapolis lack a high school diploma, and over 6,000 more high school dropouts are added to that number each year. He said that once these students drop out, there are not a lot of options, and The Excel Center is set up to provide a safety net for these individuals. He said that employers are increasingly seeking higher-skilled workers that require some level of post-secondary education, and Excel will link with post-secondary learning through a dual credit program at Ivy Tech Community College, paid for by the school, to give students a strong start to a certificate program or associates degree. Mr. Bess said that the school will be open six days a week, year-round, most hours of the day, with a mix of online, instructor-led, small group and tutoring resources. Students will be assigned to a team of eight to ten people with similar life goals, and a coach will meet with them to guide them through the educational process and help to eliminate barriers they may face in continuing their education, as well as introduce opportunities to them to help with their continuing education, such as financial literacy and wire payday loans. He said that learning is individualized based on an initial assessment, and the academic path is then set. He said that part of this process includes the compass test at Ivy Tech, so that they can begin degree-bearing programs to complement their continuing education. Assessments are done regularly with different types of tests, and there is a community engagement piece built into the program. High school dropouts tend to be receivers, but Excel hopes to turn these individuals into givers, by helping them earn points through community involvement and activity. He said that the intent of the Center is to increase the graduation rate, provide a good start toward post-secondary learning, and help these individuals obtain the work skills they need to succeed.

Councillor Cockrum said that the handout provided indicates this school is targeted for 18 to 22-year-olds. He said that normally, most high school graduates are 18 years old, and he asked what the source of funding is for the school and if it can still qualify for funds from the Department of Education (DOE) with this age range. Mr. Bess said that DOE funding is still available up to the age of 22 years old, and they can work through the traditional Kindergarten through 12th Grade funding stream. He said that most of the individuals they will see in this program will be age 20 or 21, and this Center is officially set up to work with individuals who have life issues, such as a pregnancy or family or health issue that caused them to drop out of school before graduation.

Councillor McQuillen said that he appreciates the individualized learning and working at their own pace, but asked if there is a guesstimated amount of time the average student will take to complete their studies. Mr. Bess said that some individuals may spend four months or less, depending on the amount of credits they need to complete their diploma requirements. He said the target is for individuals to receive their diploma in two years

or less. He said that the hope is that with the dual credit program with Ivy Tech, they will complete their diploma requirements faster and then stay engaged with the post-secondary education.

Councillor Mansfield said that she appreciates seeing this type of proposal, particularly because many young people have different life experiences, and if there is a break in their education, often they do not come back to finish. She said that this concept is more in line with what she thought charter schools should be used for, a specialized niche that the public schools do not particularly address.

Brooke Huntington, president and chief executive officer of the Indianapolis Private Industry Council (IPIC) which operates the WorkOne offices in Marion County, said that there are 7,600 individuals in their WorkOne system in Marion County who do not have a high school diploma, which is about 26% of their clients. She said that there was a study done that compared the labor market outcomes of individuals who had a high school diploma with those who had a general equivalency diploma (GED) or had dropped out. She said that the labor force participation was significantly higher with higher wages and more consistent work histories for those with a high school diploma, as opposed to those who had dropped out or acquired a GED. In the job postings from employers on Indiana Career Connect, less than 1% ask for a GED as a minimum requirement, and 35% list a high school diploma as a minimum requirement. Sixty-one percent of the higher wage jobs require a high school diploma. She said that she feels addressing this city's dropout problem is an imperative for workforce development in the community. She asked the committee to support this charter approval.

Larry Vaughn, Concerned Clergy, asked what the track record is for this program and how many people have completed it. Mr. Bess said that this is a new concept, and therefore, there is no history and no statistics. He said that they have another school with similar demographics, and it has a 95% success rate. Mr. Vaughn said that the United States Constitution provides for common schools and states that the tax on corporations shall fund common schools. He said that the state is obligated to provide every child, no matter what their life situation, with an education. He asked if the school is expecting to get paid based on their performance. Chairman Lutz said that DOE funding is generally tied to the school's performance. Mr. Vaughn asked if this could be guaranteed. Chairman Lutz said that he does not know how they can guarantee performance at this point, as it is still a concept at this time. Mr. Vaughn said it is a shame that they allow corporations to come in that are supposed to be paying for one common school, so that they can direct the labor force, and they go out to other corporations and give them a sweetheart deal to take the rejects of their system. He said that he believes this to be illegal per the Constitution.

Councillor McQuillen moved, seconded by Councillor Mansfield, to send Proposal No. 130, 2010 to the full Council with a "Do Pass" recommendation. The motion carried by a vote of 7-1, with Councillor Sanders casting the negative vote.

Councillor Sanders asked for consent to explain her vote. Consent was given. Councillor Sanders said that her negative vote is not a reflection on the entity itself, but she feels strongly that charters diminish the public school system, and this effort should instead be incorporated into the public schools, so that more funding can be directed toward that system.

PRESENTATION ON PROPOSAL TO TRANSFER THE WATER AND WASTEWATER SYSTEMS TO CITIZENS ENERGY GROUP - Chris Cotterill, Chief of Staff, Mayor's Office and Carey Lykins, President and CEO of Citizens Energy Group

Chairman Lutz stated that this presentation has to do with Proposal Nos. 131 and 132, 2010, and he asked for consent to consider these proposals together. Consent was given.

PROPOSAL NO. 131, 2010 - authorizes the transfer of the waterworks and the sewage works of the City of Indianapolis to Citizens Energy Group

PROPOSAL NO. 132, 2010 - authorizes the issuance and sale of revenue bonds to procure funds to be applied to the costs of the construction, renovation, rehabilitation and installation of improvements to the public ways, including roads, streets, alleys, trails, sidewalks and other public facilities, appropriating the proceeds derived from the sale of such bonds, modifying the amount of payments in lieu of taxes payable by the sanitary district

Chris Cotterill, Chief of Staff, Mayor's Office, introduced Carey Lykins, president and chief executive officer of Citizens Energy Group (CEG), and Rich Hill, attorney with Baker and Daniels, Public Finance Group. Mr. Cotterill said that water and wastewater rates are increasing, while at the same time, infrastructure deficit continues to grow. He said that in the context of these challenges, the Mayor's Office put together a Request for Expression of Interest (REI) in July of 2009. The city's stated priorities in the REI included:

- Synergies from combined operations
- Capital improvements; faster, better, cheaper
- Public debt is cheaper than private debt
- Significant minority, women and veteran business opportunities
- Local job creation
- Reach environmental compliance earlier

[Clerk's Note: Councillor Rivera arrived at 5:58 p.m.]

Mr. Cotterill said that the REI included a robust public process, and 24 responses were received and evaluated by city staff and the Infrastructure Advisory Commission. He added that as a result of the REI process, the city issued a memorandum of understanding (MOU) which lays out the structure for a proposal that would have the

city transfer their water and wastewater systems to CEG. He said that some of the benefits of this proposal include:

- CEG's nonprofit charitable trust ensures the lowest cost, as well as trusted local and public management
- Rates will be 25% lower than currently projected by 2025 due to combined savings and tax-exempt debt
- Up front, this will provide more than \$425 million to invest in infrastructure and will create thousands of jobs
- With United Water and Veolia supporting the proposal, a smooth transfer is ensured

Mr. Lykins stated that while most people know CEG best as the local gas company, they actually manage three local utilities: natural gas, steam and chilled water. With a steam plant that is over 100 years old, CEG is used to the requirements of maintaining systems to offer safe, reliable and dependable utility service. He said that there have been some questions regarding CEG's governance structure. CEG has a seven-member board of directors appointed by a five-member board of trustees, which is self-perpetuating, filling their own openings, which was the original concept of the charitable public trust. The board is non-partisan and is made up of successful business people who are rooted in this community. Further accountability is ensured because both utilities will be regulated by the Indiana Utility Regulatory Commission (IURC), the Indiana Office of Utility Consumer Counselor (OUCC), the Indiana Department of Environmental Management (IDEM) and the United States Environmental Protection Agency (EPA). Because CEG is a non-profit charitable trust, there are no profits built into their rates, and so smaller rate increases are achieved through operating synergies, value engineering, and a more efficient capital structure. He said that the rate projections, assuming the conclusion of the city's current general rate case at its last filing, are anticipated to be 25 to 30% less in 2025 than any other alternative proposed, including continued city ownership. He said that at the conclusion of the combined sewer overflow (CSO) solutions, they project that an average household would pay approximately \$118 a month for combined water and sewer service in 2025. Mr. Lykins said that these rates are possible partly because of operation synergies projected at about \$42.8 million in savings after an initial transition period. They are just about to complete Phase 1 of their due diligence, and he now believes this savings number is conservative, and they can do better than \$42.8 million. He said that they propose to transfer the water utility for the value of its debt, assuming that debt; and they propose to transfer the wastewater system for the value of its debt, plus a cash premium payment of \$262.6 million to be paid in two installments, \$170.6 million at closing and \$92 million in October, 2011. Adding to that the intended payment in lieu of taxes (PILOT) bond issue, valued at \$140 million, and the approximate wastewater general fund, valued at \$50 million, the total maximum proceeds to the city equal approximately \$452.6 million.

Mr. Lykins said that the MOU allows CEG to accept assignment of the United Water and Veolia contracts, and retaining employees at the utilities is key to ensuring a smooth transition and effective service. He said that employees will retain their collective bargaining rights and remain employees of United Water and Veolia. He said that they do not have available employees at CEG to cover those positions, nor are their employees trained on these utilities' systems, and therefore, retaining those employees is necessary. He said that CEG is committed to providing safe, reliable service for water and wastewater, like they have for natural gas over the years. He said that they are committed to stepping into the city's shoes to complete infrastructure investments for a timely resolution to the CSO issues, as well as the Septic Tank Elimination Program (STEP). He said that they will focus on safety, reliability and customer service to find the best and most efficient ways to operate while meeting the needs of all stakeholders, customers, elected officials, labor unions and regulators. He added that they are also strongly committed to diversity as a core value that guides their business strategy.

Mr. Cotterill added that they have been meeting with several groups, including many public forums, and have received favorable support from the Greater Indianapolis Progress Committee (GIPC), the Indianapolis Business Journal (IBJ), and the Interdenominational Ministerial Alliance (IMA), just to name a few. He said that they are taking time to respond to questions and outline the reasons this is a positive step for the city by making a significant debt on future rate increases, addressing the infrastructure deficit without a tax increase, and finding savings and efficiencies without raising taxes.

Mr. Hill provided a handout to committee members (Exhibit A) and went through the 36 "Whereas" clauses contained in Proposal No. 131, 2010, which is the asset transfer ordinance. He identified the following key points spelled out in the "Whereas" clauses:

- Identifies the value of an integrated water and wastewater system
- Indicates the authority of CEG to operate various utilities
- References the REI process which culminated in the MOU with CEG
- Establishes the ability of the utility district and CEG to enter into interlocal agreements for the provision of utility services
- Establishes the legal authority for the transaction, including IC 5-22-22, IC 36-1-7, IC 36-1-11 and IC 36-3-4-23
- Acknowledge that this transfer would be in the best interest of the utility districts and the citizens of the community
- Describes the attributes of the two authorities to be created
- Provides for preliminary approval by the Council for the sale, subject to further confirmation regarding the definitive agreements, as consistent with the terms of the MOU

Mr. Hill also provided a detailed review of the Sections of the proposed ordinance, which is also included in the handout. Some of the key points of those sections include:

- Establishment of the Utility Oversight Committee
- Approval of the MOU and sale and transfer of systems
- Approval of the final form of interlocal agreements
- Authorization for the Mayor and other officers to execute the necessary documents
- Pledge of an irrevocable action for the transfer and sale
- Constitution of the exercise of home rule
- Revisions to the Revised Code of the City and County by Corporation Counsel
- Provisions are severable

Councillor Gray referred to Section 5 and asked about the “irrevocable action” language. He asked if the Council or city could not then reverse the transaction if it does not work the way it is supposed to work. Mr. Hill said that assets are pledged as a part of this transaction. In order to move forward with future financings, CEG would need control of those assets, because those financings are based on the assumption that CEG controls those assets. If at some point in time the transaction is reversed, those financings would have to be dealt with. Councillor Gray asked if state statute says that an MOU has to be revocable. Mr. Hill said that the MOU is actually non-binding, but the closing of the transfer and sale transaction is what would be considered the irrevocable action. Councillor Gray asked if this is in violation of the statute. Mr. Hill answered in the negative. Mr. Cotterill added that the intent of this proposal and the debate is to put the assets into CEG’s public trust. Once in the trust, those assets do not come out of the trust.

Councillor Vaughn said that he understands the reasoning behind the wording “irrevocable action” but asked if by entering into this financing with this wording, the city would be waiving the power to condemn the utility if in 10 years the city is not happy with the administration of the utility and wishes to pay fair market value and take it back. Mr. Cotterill said that he believes the power of condemnation is still within the city’s right, assuming there is some problem. He said that he understood Councillor Gray’s question to refer to the city just deciding they wanted to take it back. He said that a trust deals with different governmental structures, with a board and trustees, and there are certain safeguards in place. Councillor Vaughn said that if, however, there were some problems or issues without remedy, the city could still use the power of condemnation to take back control. Mr. Cotterill said that he believes they can, but will have to get a more competent legal opinion from a utility lawyer on that issue.

Councillor Cockrum said that years ago the City owned the water company, and then the Indianapolis Water Company was created. In that transaction, a provision was included that the city would have the first right of purchase if the company decided to sell, due to a serious concern about maintaining local control of the water company. He asked if the same provision is included in this transaction. Mr. Cotterill said that they are still drafting the definitive agreements, but part of the discussion has included the scenario of the trust failing and the assets reverting back to the city, in order to keep the utility locally owned. He said that they are still in negotiations regarding those definitive

agreements and are working through those issues, and would definitely take note of the Council's recommendation to include such a provision in the final documents.

Councillor Cockrum said that his personal feeling is that the city should have the right to buy the utility back if CEG should decide to sell. Mr. Lykins said that the utility assets would remain in the trust and cannot be sold as long as the purpose of the trust is being fulfilled and people are buying water. He said that attempts to break the trust and take over have all failed on a legal basis. He said that if CEG becomes incompetent, then there are legal remedies through the probate court to deal with such a situation. He said that CEG would not be opposed to adding that provision into the final documents, because they do not have a legal ability to sell that utility as long as the trust is fulfilling its purpose.

Councillor Sanders said that she believes there is a need for language regarding the termination or regulation of agreements. She said that anything could happen in the next 25 years, and she is not even thinking of something as catastrophic as the trust failing. She said that the city needs to reserve the right to look at the operation, and if the operation is going askew or rates are going too high and citizens do not have any form of mitigation, then the city needs to be able to step in. She urged the negotiators to define those types of consequences and add language to protect the city and its ratepayers.

Andy Mallon, counsel for the Minority Caucus regarding this transaction, stated that the statute which controls interlocal cooperative agreements is IC 36-1-7-1, and section 3 (a) 4 of this statute includes a requirement that any interlocal agreement has language about partial or complete termination of the agreement. Mr. Mallon said that the agreement has to specify a duration period, and he asked if the agreement is in perpetuity, how it does not violate the requirements of that statute. Mr. Hill said that it is not unusual for interlocal agreements to reference their duration as being in perpetuity. He said that the duration period does not have to be defined in days, months or years and could be defined as being in perpetuity. He said that these agreements, in those cases, also often include a provision that the parties can, by agreement, determine that the arrangement is no longer viable. While Section 5 of the proposal makes the pledge of property, because the financing requires such, the parties entering into the interlocal agreement could decide on a different way to provide utility services. Mr. Cotterill stated that maybe they could make the proposal language align better with how CEG's governance works, with all of its checks and balances, and a method of revocation included. He said that he believes their analysis complies with that, but maybe they could outline it better in the proposal to make the lawyers feel more comfortable with the language. Councillor Sanders recommended they have additional discussions regarding this issue beyond this meeting.

Councillor Sanders asked about the two separate authorities and asked if they will each be under the public trust. Mr. Hill responded in the affirmative. Councillor Sanders asked where they get the authority to do that. Mr. Hill said that IC 36-1-7 gives them the authority to create the authorities. CEG has a public entity as established by statute

and can enter into interlocal agreements with other public entities, such as the City of Indianapolis. He said that the parties could then decide that these services will be provided by CEG directly, or they can jointly agree that they will be provided by a new entity, acting as an instrumentality of CEG or as a department of the city. Councillor Sanders asked if they can take on the wastewater utility, even though the Department of Public Utilities (DPU) specifically excludes sewers, simply because they are assuming some sort of mutuality of power between CEG and the city. Mr. Hill said that he believes Councillor Sanders stated it correctly. Mr. Cotterill clarified that in the express powers of DPU, there are a number of utilities outlined, and while sewers are not among the list of those they "must" or "shall" run, it is within the scope of the powers of CEG to run the sewers. The real benefit of this creation of sub-groups is to protect ratepayers, so that people who have debt against those systems are protected and it makes it harder to make a plausible argument that one utility could subsidize another. Councillor Sanders said that she is not a lawyer, and this is an extremely convoluted ordinance and deal, and she still does not follow how creating a corporation can allow them to include sewers if the statute does not indicate that sewers fall under this category. Mr. Hill said that simply creating the authority does not solve what Councillor Sanders believes to be the issue. He said that Councillor Sanders is citing one section of a title in the statute, but if she were to look at other language within that same title, in terms of the function and existence and the broader scope of what Citizens does and can do, it becomes clearer that the exclusion of wastewater in one statutory reference does not mean that Citizens does not have the power to operate that utility. Councillor Sanders said that she will have to agree to disagree because she does not think she will ever get comfortable with that issue, as the language seems very clear to her.

Councillor Sanders said that in reference to the proceeds Mr. Hill said the city will get, she does not perceive those as proceeds. She said that this is borrowed money that ratepayers will have to pay back, so it is really a tax on rates. Calling these funds proceeds is misleading, because it is borrowed money and is the proceeds of bonds both from CEG's and the city's issuance of bonds. Mr. Hill said that from another perspective, as the city contemplates conveying the assets, they obviously want to make sure they are conveying them for a fair value. That is an obligation to ratepayers. He said that in terms of accepting those proceeds, he would argue that conveying these assets that have been built up through years, both in the water utility and wastewater utility, without a fair market value that relates to an actual appraisal is not consistent with the obligation of either utility to ratepayers. Councillor Sanders said that she would argue that it is a consolidation, just like many of the other consolidations that have taken place, especially if CEG is defined as a department.

Councillor McQuillen thanked representatives from the Mayor's Office and CEG for all of the many public meetings, including one recently in his district. He said that during that presentation in his district, it was mentioned that there were several other municipalities who have had combined utility oversight, such as Jacksonville, Colorado Springs and Memphis, and he asked if in any of these cases those assets were transferred to a trust and if they have studied the successes or pitfalls of these other situations. Mr. Lykins

said that there have not been any transfers that he is aware of to a trust, and this transaction is unique in that regard. He said that there have been transfers of assets to other entities, and some have just been consolidated into the city. He said that the most recent transaction he is aware of was in Jacksonville, and those assets were sold to the electric utility and is thought to have been successful in terms of efficiencies being achieved, rates being mitigated and jobs being retained. He said that it is a somewhat similar transaction that has been successful on a more aggressive scale than they have depicted here this evening.

Chairman Lutz asked if they know the savings that have been realized in the Jacksonville transaction. Mr. Lykins said that he does not know that amount, but can find out. He said that in their targeted expense categories, they are targeting 10% savings, but it will probably be more than that, as he believes Jacksonville experienced more than that as well.

Councillor Gray said that some articles have referred to this as a sale, and others refer to it as a transfer. He asked which this transaction actually is. Mr. Hill said that they are not really trying to make a distinction, and it is essentially both and they are one and the same. He said that there is no legal consequence in using either term, and in an array of statutes both terms are used. Councillor Gray said that the Water Company has said that they have \$0 to invest in this project, but yet, the presentation indicated several million dollars of investment. Mr. Cotterill said that if the city and the Council do nothing, citizens will end up paying more than they should for water in a few years, and the city will have worse roads and sidewalks than they have now. He said that as a non-profit charitable trust, CEG does not have \$2 million sitting around to invest. He said that the city originally looked at combining the water and wastewater systems, and found possible savings of \$6 to \$7 million. However, CEG combines those two systems with their other three systems of natural gas, steam and chilled water, and they can realize a much larger savings through consolidation. Mr. Cotterill said that a \$40 million annual savings is a conservative estimate. He added that the employees are key, and they are not projecting layoffs, and therefore CEG is able to take out that debt so that the city gets paid, and they can realize those savings and pay for that debt. He said that the ratepayers receive 96% of the benefit of those savings. Councillor Gray asked why CEG has not paid a PILOT in the past. Mr. Cotterill said that state law permits PILOTS on airports, health and hospital, wastewater and a few other entities, but not on any of CEG's current assets. Mr. Lykins added that CEG pays property taxes on all their assets, and therefore there's no need for a PILOT. Councillor Gray asked if CEG will continue to pay property taxes. Mr. Lykins said that they will continue to pay property taxes on all assets but the wastewater asset, for which they will pay the PILOT.

Councillor Mansfield said that she asked for a detailed evaluation of the assets and detailed assumptions like those done for an appraisal. She said that she has not received this information. Mr. Cotterill said that this information is available on the website, but he will make sure Councillor Mansfield gets a copy. Councillor Mansfield said that she also raised a concern at the Public Works Committee that these proceeds

are raised on the backs of ratepayers, and yet are being used for another purpose. She said that there are a number of areas in the city where families are still on septic systems, and places where sewage is bubbling up in yards, creating a serious public health issue. She asked why these proceeds cannot be used for this issue instead, so that it is taken care of sooner. She said that the answer given to her by the Director of the Department of Public Works (DPW), David Sherman, was that there was a capacity issue. She said that she has subsequently looked at the MOU, and if this deal goes through, it looks like it would actually slow down the STEP process, and this seems counter-intuitive. Mr. Cotterill said that during the negotiations, they were concerned about the structure of the rate increases that the Council approved some time ago, and that there could be a need to change the capital investment. Subsequent to the MOU, additional savings and information suggest to them that there will not be a slowdown in the STEP process. He said that it is not their intent to delay that process, and the definitive agreements will reflect that. Mr. Lykins added that it was a question of financing, and not a question of the construction schedule. Councillor Mansfield said that she would love to have sidewalks in her district and appreciates the need for infrastructure, but it seems they are mixing apples and oranges. She said that if they really want to raise funds for infrastructure, they should do a referendum and let the taxpayers decide. She said that this seems like a coward's way out of this situation to take funds for sewers and water systems and apply them to separate infrastructure needs. Mr. Cotterill said that he is not sure the administration would accept that non-feasance and doing nothing is an act of courage. He said that it takes courage to come before the Council and subject themselves to difficult detailed questions. He said that he believes the reason Mayor Gregory Ballard was elected was to find every opportunity for savings, to balance the city budget within property tax caps, to cut the income tax with the Council's approval, and to apply the same straightforward consolidation approaches of city government to the utilities. He said that he understands Councillor Mansfield's characterization, but believes this administration is charged to prevent tax increases and find savings. Councillor Mansfield said that she still believes it is mixing apples and oranges. She asked why a new committee, the Utility Transfer Oversight Committee (UTOC), needs to be created, and why the Rules and Public Policy Committee or another standing committee of the Council could not handle this issue. She said that it looks to her like this committee has the final say, and the matter would not have to go to the full Council for approval. Chairman Lutz said that a committee cannot have final approval of an ordinance, and by reason of the term "ordinance," it would require the full Council's approval. Councillor Mansfield said that she would hope that to be the case, but it is not how the current language is written. Mr. Hill said that the presumption is that the ordinance would be adopted through the regular ordinance approval process. Councillor Mansfield asked why a separate committee is needed. Mr. Cotterill said that the administration does not necessarily have a position on that. Councillor Vaughn said that Council leadership had originally contemplated six public meetings, but in discussions with Minority Leader Sanders, she felt more time was needed. Both he and Councillor Sanders agreed that they should proceed with extensive review of the final definitive agreement, as well. During that consultation, they decided that they would proceed with the standing committees' review of the proposed

transfer, and then once the proposal was passed, they would move forward with this special committee reviewing the definitive agreements. He said that it was never intended that this special committee be the final authority, and it was always the understanding that the definitive agreements would also go through the normal Council committee process to receive final passage by the full Council. Councillor Mansfield said that she believes the language needs to be clarified to reflect that.

Councillor Rivera said that in this transaction, CEG will be taking over paying for the STEP program. He said that the speed of this program has quadrupled in the last three years, and he asked if CEG expects to be able to maintain that same rate of conversion. Mr. Lykins responded in the affirmative.

Councillor Sanders asked with CEG assuming the two outstanding contracts with Veolia and United Water, when those contracts expire and when new negotiations will proceed. Aaron Johnson, CEG, stated that the Veolia contract is good through 2022, and United's contract lasts through 2018, with some options for extension. Mr. Lykins stated that they have just started verbal negotiations with Veolia this week, and both entities have asked to renegotiate their contracts.

Councillor Vaughn asked what percentage of the ratepayers are Marion County taxpayers. Mr. Cotterill said that on the sewer side, 100% of the ratepayers are in Marion County. On the water side, a couple of communities are served beyond Marion County, and he does not know the exact percentage but can provide that information. Councillor Cockrum said he believes there are some contractual agreements on the sewer side outside of Marion County. Mr. Cotterill said that Director Sherman, Deputy Mayor Michael Huber, Mr. Johnson and other representatives have been attending various advisory board meetings and forums, and the response has been positive.

Councillor Gray asked if ratepayers outside of Marion County will be liable for the same rate increases as those within the county limits. Mr. Lykins stated that all water customers would pay the same rate, whether inside or outside of Marion County.

Councillor Sanders said that she has still not been able to receive a clear answer to the concern about how the city has received the authority to negotiate this sale from the Waterworks Board, which was set up to oversee the Water Company. Mr. Cotterill said that they have asked the Waterworks Board for their assent to refer to the Council on this transaction, as well as seeking approval from the Board of Public Works and the IURC. He said that the ordinance that creates the Board of Waterworks refers to a requirement that they approve all agreements related to the Waterworks, and therefore, they are looking forward to their ultimate approval sometime before the Council approves the definitive agreements. Councillor Sanders asked what gives the city the authority, then, to negotiate without the Waterworks Board approval. Mr. Cotterill said that CEG recognizes that there are many contingencies on which these negotiations rely. He said that they wanted to be able to take the fully developed idea to these entities before making their presentations and asking for approval.

Councillor Gray asked if there is any sequence or order of approval by these three entities. Mr. Cotterill said that they already have the Board of Public Works' approval, and they are seeking the Board of Waterworks' approval, and hope to have that before the full Council votes. Councillor Gray said that it seems they would have those boards' approval before coming to the Council. Mr. Cotterill responded that, technically, the Council can change the powers of the Board of Waterworks, and therefore, the Council confers the power to both of these boards, so those boards cannot prevent the Council from acting on this issue. Councillor Gray asked then if those boards have no strength. Mr. Cotterill said that those boards do not have strength and powers greater than elected officials, and it was not intended that they do have. Councillor Gray asked what happens if they disapprove of this transaction. Mr. Cotterill said that he has not really thought of that, and believes they will approve the transaction; but if they do not, that does not prevent the Council, who sets the powers of the board, from taking action. Mr. Hill added that the board is authorized by an ordinance that was created by this Council. Councillor Gray asked if in order to overrule them, the Council would have to change the ordinance. Mr. Cotterill said that this would be an option.

Councillor Sanders asked Mr. Mallon to respond to this issue regarding board approval. Mr. Mallon said that the Council approved statutes and ordinances to create the Board of Waterworks, and this board was created differently than other boards to protect the board and give it additional authority. He said that it seemed the intent of this body was to create a situation with a board to act independently of the Council, with positions filled by neither the city or Council for a more independent voice. Mr. Cotterill said that he understands him to be saying that the permanency of the CEG solution may not be as permanent as a Waterworks solution, and they could debate this issue ad nauseum. He added, however, that water is expressly listed as a right for CEG to manage, and even though sewers are less straightforward, they believe it to equally be within their rights to manage.

Councillor Cockrum said that he believes the Council makes nominations to the Board of Waterworks, and the Mayor makes the official appointments. Mr. Cotterill responded in the affirmative. Chairman Lutz asked if the creation of the Waterworks Board is a result of a Council ordinance. Mr. Cotterill responded in the affirmative and stated that it is also referenced in state law.

Councillor Gray stated that if the Mayor has the power to appoint people on the Waterworks Board, then he could replace those appointees if they do not support this transaction. Mr. Cotterill stated that he actually does not think that is an option, as these appointees are appointed for a specific term and can only be removed for cause. He said that these particular appointees do not serve at the pleasure of the appointing authority, as with some other boards.

Mr. Hill provided a second handout (Exhibit B) providing a summary of the PILOT bond ordinance. He said that this ordinance accomplishes three things:

- Authorizes the issuance of bonds to obtain funds to be applied toward infrastructure improvements,
- Appropriates the proceeds from the sale of the bonds, and
- Modifies the amount of PILOT payable by the Sanitary District and sets the terms and conditions of such payments.

Mr. Hill said that the Board of Public Works did adopt a resolution approving this transaction, which contains general references to projects to be funded from the proceeds. He said that this PILOT is in addition to the \$9 million that goes to help fund public safety. These additional funds are restricted to roads, streets, alleys, trails and sidewalks. He reviewed the "Whereas" clauses and Sections included in the proposal, as detailed in Exhibit B. Section 12 gives them the option of having the bonds issued as "Build America Bonds" or "Recovery Zone Economic Development Bonds," which provides the city with a unique benefit in terms of a lower interest rate.

Councillor Cockrum asked what percentage of these bonds would be variable rate bonds. Mr. Hill said that he does not believe any of them would be variable rate bonds. Ray Kljajic, Citigroup, stated that there are no variable rate bonds in the structure, and they would be traditional tax-exempt or "Build America" bonds.

Councillor Nytes asked if there are two separate authorities being created or just one. Mr. Hill said that there will be two authorities, one for the operation and administration of the water utility, and one for the operation and administration of the wastewater utility. He said that they had contemplated combining them, but for now, they are separate authorities, and they have proposed separate interlocal agreements for each. Councillor Nytes said that the presentation made references to a board of trustees and a board of directors. She said that it needs to be very clear to citizens which citizens will be entrusted with the governance of these public assets. She said that she is familiar with some of the individuals currently on the board for CEG's non-profit charitable trust, but asked if these new authorities would operate under the same board of directors and trustees or new entities. Mr. Lykins said that the same board of directors and trustees will serve the new authorities.

Councillor Nytes said that in their presentation to the Administration and Finance Committee, there were numerous references to the fact that in calculating the valuation for the sale of the water company, the value of the PILOT was repeatedly referenced at \$9 million. In this PILOT analysis, the value goes as high as \$29.4 million. She asked how they can have any certainty that when they did a series of valuations using a \$9 million PILOT, they now are projecting a PILOT as high as \$29 million. She said this makes her a little uncomfortable about the numbers. Mike Lane, independent appraiser, said that they have done that analysis, and if that increased PILOT value is plugged into the valuation, it lowers the value about \$170 million. Councillor Nytes asked when using the \$9 million PILOT, what the valued appraisal was. Mr. Lane said that it was \$1.9 to \$2.2 billion, and that drops down to \$1.7 to \$2 billion if the higher

PILOT payment is included. He said that they factored the PILOT into the expenses and determined what effect both the higher and lower PILOTs would have on the value. He said that their appraisal was a fair market value appraisal of a hypothetical buyer, not a specific purchase. They are analyzing the purchase from CEG's perspective now as a part of the work they are doing for the city, and have determined that a higher PILOT payment would lower the value.

Councillor Nytes said that it was clear to her in reading the materials she has been given that there is a point at which CEG may find that the final rates and numbers do not work, such as if the rate case now before the IURC is not adequately resolved. At that point, CEG may determine that there will not be a sufficient level of revenue to support their models. She asked how the Council can be looking at revenue bond issuances that would require a level of rates and savings within these combined utilities to pay these bonds over a period of time without the completion of the rate case and no final details of the sale. She said that she understands that they want to take advantage of "Build America" bonds at lower interest rates, but it seems to be putting the cart before the horse. Mr. Cotterill said that the rate case applies to water, and does not directly impact the PILOT. However, it could impact CEG's overall position to decide whether or not the conditions are favorable for them to close on the transaction. While the PILOT is on the wastewater system, it reflects a number of efforts to find savings, both with consolidation of utilities with the CEG transaction and with respect to the work Director Sherman has done within DPW. He said that the question then becomes, "What has DPW done to put them in a position that if the transaction fails, how are they assured that their ratepayers can afford those payments?" He asked Director Sherman to address that question. Mr. Sherman said that they have been looking at the total capital expenditures needed, and early in the year, they found some savings with bidding out some contracts at lower costs and through value engineering. The value engineering lowers the amount of money they would have to borrow, and in talking with the PILOT financial staff, they have looked at the rate, and looking at the coverage at a 10.75% ratio, they felt that they could afford the \$140 million going forward.

Councillor Sanders said that technically, if they choose to assess a PILOT, it does not necessarily have to be relative to market value of an entity, and they could have left the \$9 million flat throughout this process. Mr. Hill stated that this is correct. Councillor Sanders asked if they are essentially raising the PILOT in an effort to pay off the bonds, and if they did not have to make a bond payment, they could retain the PILOT at \$9 million. Mr. Cotterill said that the PILOT statute represents a more clear intent of the Legislature that ratepayers should compensate taxpayers for some of the services provided to them. He said that the PILOT is a more direct way of transferring value from ratepayers to taxpayers. Councillor Sanders said that she understands the argument has been made that it is related to market value, but in fact, the PILOT could have stayed at \$9 million, or at least less than the \$29 million, but is driven higher by the borrowing. Mr. Cotterill said that is correct. He added that but for the savings identified by Mr. Sherman and the larger opportunity, they would not have proposed to raise the

PILOT, because it would not have coincided with a lower projection of rates. The 25% rate mitigation reflects the PILOT included, not a PILOT over and above that.

Councillor Sanders said that there is a request at the IURC regarding the rate case at 35.7%. She asked if that request is not accepted, what the bottom line percentage is that CEG will not go below in order to accept this deal. Mr. Lykins said that the city filed their rebuttal case asking for 32 to 33%, and he understands that the Office of Utility Consumer Counselor has suggested that 21% would be an adequate increase. He said that the IURC is not bound to choose a number between those two, but they would have to evaluate cash flow and coverage ratios when the result comes in. However, he added that they are confident that something less than the 32% will suffice. Councillor Sanders asked if they modeled this transaction on the 35.7%. Mr. Lykins said that they modeled their numbers on the rebuttal case of 32%. Councillor Sanders said that some charts were shown at the Administration and Finance Committee on how they are capitalizing the PILOT payments, and she still has not received a copy of those slides and she believes everyone would benefit from seeing them.

Councillor Gray asked if it is possible that the city could have done the PILOT and sold these bonds on their own without going through CEG. Mr. Cotterill answered in the affirmative. Councillor Gray asked why then they did not do it themselves. Mr. Cotterill said that they would have considered that, but they are careful to protect the standards set in the consent decree. He said that they could lower their standards and get more money, but the question is how they can deliver the same standards and do it more cost-effectively. Mr. Sherman added that they could not get the same amount of synergies by combining two utilities as CEG can get by combining five entities. He said that the new entity formed by CEG would realize \$760 million in revenue versus the \$290 million in revenue the city would realize if simply consolidating the two utilities. He said that that gives them three and a half times the capability of finding those finances. He added that in their negotiations with the EPA, they have restructured the consent decree to pick up almost five billion gallons of sewage earlier, making it more flexible so that the end cost would be lower by sending refuse to either wastewater plant instead of the previous separation, and they are awaiting the EPA's approval of that restructure. He said at the end of the day, this transaction will allow them to have a cleaner city, pick up more sewage, and save \$600 million.

Councillor Vaughn said that the PILOT money currently goes to help fund public safety. He asked if the PILOT level has always been at \$9 million. James Steele, Council Chief Financial Officer (CFO), stated that the PILOT payment started in 1992, when he served as City Controller, at \$4.35 million. He added that they hired a firm to calculate what the PILOT payment should be, and it remained fairly stable through the late 1990s. In 1998, when Ann Lathrop was City Controller, it was increased to \$4.6 million. He said that it did not change again until 2004, 2005 or 2006, when it went to \$9 million, and it has remained flat since that change. Councillor Vaughn asked if that money has always gone to pay for public safety. Mr. Steele said that a little bit of it went into the Consolidated County Fund in the 1990s. Councillor Vaughn said that his point is that

during the last administration, the PILOT was doubled from \$4.6 million to \$9 million. He asked if that decision to increase the PILOT came before the Council. Mr. Steele said that it would be included in the budget, so they would have seen that increase during the budget process and would have had to approve it through approval of the budget. Councillor Vaughn said that there is therefore some historical precedent for increasing the PILOT under both previous administrations and using the money for something other than stormwater purposes.

Councillor Mansfield said that she has heard that IURC can receive a certain percentage of bonds that are issued. Currently, because water rates are already being looked at, it would not be an issue. However, she asked since IURC does not currently review sewer rates, would this deal, if it goes through, create an additional revenue stream for the state. Mr. Cotterill said that, although he cannot speak directly as to how that would work, these state departments do find ways to charge those whom they oversee. Councillor Mansfield asked if the IURC could then be objective in reviewing the deal, if this transaction would add a potential revenue stream for the state. Mr. Lykins said that he understands that point, and the IURC does require fees for regulation, which is different for different entities. He added, however, that they do not need the IURC's authorization to sell bonds. Some entities do, but CEG does not. Councillor Mansfield said that it would be helpful if someone could look into this issue.

[Chairman Lutz called for a ten-minute recess at 7:39 p.m.]

Chairman Lutz reconvened the Rules and Public Policy Committee of the City-County Council at 7:49 p.m. and called for public testimony.

Larry Vaughn, Concerned Clergy, asked if there is an actual trust document. Mr. Cotterill said that there is, and he would be happy to provide Mr. Vaughn with a copy, as he recently provided a copy to Councillor Barbara Malone. Mr. Vaughn said that the administration promised this document would be the cover to their presentation, but it has not been. He asked if the corporations they are talking about have been created yet. Mr. Hill said that the authorities have not yet been created. Mr. Vaughn asked if they are then promoters. Mr. Cotterill said that he is not familiar with that term. Mr. Vaughn said that if nothing can be verified and the entities are not yet created, how can there be any agreement and why are they actually talking about it. Mr. Cotterill said that the MOU provides boundaries and serves as a guidepost for negotiations, and they will negotiate within the terms of the MOU. He added that they are seeking the Council's approval to move forward into a definitive agreement. Mr. Vaughn said that the gas company and the water company are legislative charters. He said that the constituents who voted for the members of this committee do not want them to relinquish their authority over these utilities to some corporation they do not yet even know about. He said that this contract has been done behind closed doors, and they do not know what they will end up with. He said that they are saying with this transaction that they do not trust the brain trust in this city and the construction workers who built this city and they do not feel like their homes and families should be protected. He said that they are giving it

all away irrevocably, and he admonished them for what they are doing. He said that they do not know what they are getting into, and they have already spent \$120 million in fees.

Mari Bilger, Indianapolis Water Company (IWC) employee, said that she has been with IWC for 11 years, and her quality of life has decreased significantly with changes that have happened over the years. She said that with this new transaction, she is worried that she will have to bear more of the weight and financial responsibility. She asked the Council to look at the impact on current employees, including benefits, before decisions are made.

Marla Mitchell, IWC employee, stated that she has been with IWC for 19 years, and it is a surprise to her that Veolia and United have asked for a renegotiation of their contracts. She said it is disconcerting to her as to how this will impact the employees and their families. She asked if they will be kept abreast of decisions made and involved in the re-negotiations. Mr. Lykins said that he would love to keep the employees abreast of what is going on, but they are not his employees at this time. He said that he started out at CEG as a customer service representative 37 years ago, and he understands the anxiety that accompanies change. He said that he knows this transaction feels threatening, but there is a lot of innuendo and rumor that is causing the anxiety. He said that the savings will not be made on the backs of employees, and if this transaction goes forward, he can assure Ms. Mitchell that CEG will be fair to current employees. Ms. Mitchell asked if their benefits will stay the same. Mr. Lykins said that he believes they will for the most part, and the only changes would probably be within customer care maybe. He said that they may have to combine some call centers or billing functions, but he is hoping for no loss of jobs or pay cuts, and that any changes can be accomplished through attrition or resignation. Ms. Mitchell said that they have presented that they are saving money, but they are taking out two loans that will then be added to the rates on bills to avoid having to raise taxes to fix streets and sidewalks. She said that it seems to be a roundabout way to get money without taxing. Mr. Cotterill said that the city is working with CEG to make sure the unions are comfortable with the transition and current contracts are honored. He said that they are absolutely trying to drive value out of these systems, provide value to the taxpayer and avoid a tax increase. He said that they are just trying to find savings and ways to help ratepayers and provide adequate value for citizens. He said that the water system is essentially worth its debt, but true value is provided through synergies so that the savings exceed the cost of that debt. He said that while the rates secure that debt, they will actually be lower than they would have been because of the savings. Ms. Mitchell asked what CEG gets out of this deal, as a non-profit charitable trust. She said that they will be taking on the debt and maintenance of these systems and she does not understand what the benefit is to them if they are truly non-profit. Mr. Lykins said that there is actually no motive, and they are not increasing their earnings per share, but they are simply doing it because it is the right thing to do. He said that the public charitable trust was created to deliver value to the people of Indianapolis, and this consolidation will be

good for all citizens. He said that although in this age it may seem unusual, there are some people who still do things for altruistic motives because it is the right thing to do.

Councillor Vaughn provided a stricken-through version of a proposed substitute version of Proposal No. 131, 2010 (Exhibit C) to committee members. Councillor Vaughn said that this amendment changes the ordinance so that the Council would provide preliminary approval of the MOU, subject to final approval of the definitive agreements, to the extent that they are consistent with the MOU. Secondly, the substitute version establishes the Utility Transfer Oversight Committee, which is a function of agreement between himself, as President, and Minority Leader Sanders about a committee that would entertain the definitive agreements. Other amendments in the substitute version correspond to these two substantive changes. He moved, seconded by Councillor Cockrum, to "Amend" Proposal No. 131, 2010 as per Exhibit C. The motion carried by a vote of 8-0.

Chairman Lutz passed the gavel to Councillor Vaughn.

Councillor Sanders said that she believes the other two amendments before committee members are along the same status as her amendment, which she agreed to hold until next meeting, and she would like to wait to address these others at the next meeting, as well. Acting Chairman Vaughn said that after Councillor Lutz makes a motion to amend, Councillor Sanders could move to postpone action on that motion if she so chooses.

Councillor Lutz made the following motion:

Mr. Chairman:

I move to amend Proposal No. 131, 2010, as amended, by renumbering SECTIONS 8 and 9 as SECTIONS 9 and 10, and inserting a new SECTION 8 to read as follows:

SECTION 8. No part of any funds received on account of, or in payment for, the assets transferred pursuant to any Definitive Agreements entered into pursuant to the MOU approved by this Ordinance shall be used by any agency, department, division of the City of Indianapolis or Marion County (including any municipal corporation whose budget is subject to adoption by this Council) or any of its Boards or commissions to provide any financial aid or assistance or subsidy to any professional sports team.

Councillor Mansfield seconded the motion.

Councillor Sanders said that she believes this amendment is somewhat in conflict with the current MOU, and she moved to "Postpone" the motion to the next meeting.

Acting Chairman Vaughn asked how this is in conflict with the current MOU. Councillor Sanders said that the MOU puts the money into the Consolidated County Fund, which gives the city the authority to spend it however they choose. Acting Chairman Vaughn said that this does not make it inconsistent or in conflict, but simply further clarifies how the money will be used. Councillor Sanders said that she would still like to "Postpone"

the amendment. General Counsel Robert Elrod said that a motion to "Amend" cannot be postponed, but could be tabled. Councillor Sanders withdrew her motion for lack of a second and due to the late hour.

Councillor Lutz said that the reason for this amendment is that there has been a lot of talk about these proceeds providing funds for professional sports teams. He said that he is offering this amendment to clarify that it will not be used for such. He said that the Mayor's Office is on board with the amendment and supports it. The motion carried by a vote of 8-0.

Councillor Lutz made the following motion:

Mr. Chairman:

I move to amend Proposal No. 132, 2010, by renumbering SECTIONS 34 and 35 as SECTIONS 35 and 36, and inserting a new SECTION 34, to read as follows:

SECTION 34. None of the proceeds from the sale of the bonds issued pursuant to this ordinance nor any of the PILOT payments contemplated to be received from the District as provided in this ordinance shall be used by any agency, department, division of the City of Indianapolis or Marion County or any of its Boards or commissions to provide any financial aid or assistance or subsidy to any professional sports team.

Councillor McQuillen seconded the motion, and Proposal No. 132, 2010 was amended by a vote of 8-0.

Acting Chairman Vaughn returned the gavel to Chairman Lutz.

Councillor Gray said that he received a text from a constituent asking for an explanation of the difference between ratepayer and taxpayer and maybe that can be explained at the next meeting.

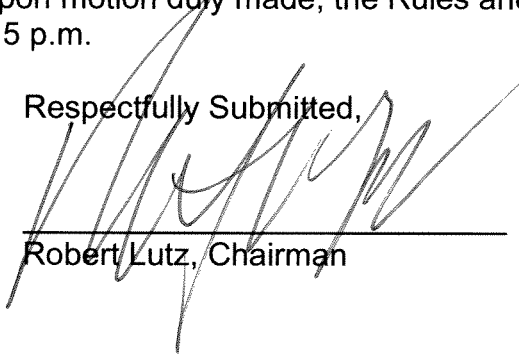
Councillor Sanders said that she has an amendment to offer, but because of discussion at the beginning of the meeting with other committee members, she will withhold it and offer it at the meeting on May 11, 2010.

Councillor Mansfield said that she has been hearing that the administration has been working toward a resolution regarding Conseco Fieldhouse and the Indiana Pacers, and she asked if the Council will be receiving an update on these discussions. Mr. Cotterill said that he will be glad to update the committee at any time on that progress. He added that there has been no intention at any time to use any of these funds to help with those sports team issues, and they are in agreement with these amendments offered by Chairman Lutz. Councillor Mansfield said that she is glad to hear that, because being so cash-strapped, her constituents would not be in favor of any of these funds being used for that purpose.

Councillor Sanders said that there has been a lot of rumor and innuendo about the process floating about in order to insure support for this transaction. She said that some have actually seen a map and been given estimates of the dollar amount of work that will be reflected in their district due to this capital investment. She said that some Councillors have not seen this information and it is very important that people understand what is being offered in this process. She added that she also heard a rumor last week from several clergy who were excited about receiving a charitable contribution relative to this process, and she would like clarification as to where that money would be going and when it will be provided. Chairman Lutz said that he has not seen any map of any capital improvement projects, and would like to see one as well.

There being no further business, and upon motion duly made, the Rules and Public Policy Committee was adjourned at 8:15 p.m.

Respectfully Submitted,



Robert Lutz, Chairman

RL/ag

**Summary of the Proposal for a Special Ordinance
Authorizing the Transfer of the Waterworks and the Sewage Works
of the City of Indianapolis, Indiana,
and Certain Related Matters**

Page 1:

- WHEREAS clause #1:
The City and the Sanitary District acting through the Board of Public Works, the governing body of the City's Department of Public Works, owns and operates the wastewater collection and treatment system;
- WHEREAS clause #2:
The Waterworks District of the City acting by and through the Waterworks Board, the governing body of the City's Department of Waterworks, owns and operates the water system of the City.
- WHEREAS clause #3:
The City recognizes the impact that the operation of the wastewater system has on the quality of water in Indianapolis.
- WHEREAS clause #4:
An integrated water and wastewater system will complement the control measures being undertaken to ensure water quality and enhance the ability to maintain the quality of the City's water supply.
- WHEREAS clause #5:
Studies have shown that urban water supply and demand issues should not be considered independent of wastewater disposal issues.
- WHEREAS clause #6:
The U.S. E.P.A. has lead efforts to integrate the management systems for water and wastewater operations.
- WHEREAS clause #7:
Other governmental entities have recognized the benefits of integrated utility management systems

Page 2:

- WHEREAS clause #1:
Whereas the Department of Public Utilities of the City of Indianapolis acting by and through the Board of Directors for utilities and such affiliates that may be created pursuant to the Interlocal Agreements is vested by law with the power to own and operate utility

properties of any kind within the City or outside of the City within the limits authorized by law.

- WHEREAS clause #2:

Whereas Citizens currently provides local gas distribution services to the residents of Marion County and owns and operates a steam production, transmission and distribution plant, a chilled water production distribution plant and engages in other energy related activities.

- WHEREAS clause #3:

The City issued a Request for Expressions of Interest regarding integration of the utility systems into a combined operation as it explored ways to achieve operating efficiencies, improve service and keep rates as low as possible and to raise funds required for City infrastructure needs.

- WHEREAS clause #4:

Citizens investigated and continues to investigate ways to more efficiently provide services to its customers and to meet the purposes that provide utilities services and public charitable trusts.

- WHEREAS clause #5:

Citizens is determined that the combined operation by Citizens of the water and wastewater utilities, Citizens Gas and Citizens Thermal will result in operating in capital projects synergies to the benefit of the City and its inhabitants.

- WHEREAS clause #6:

Citizens unique structure will ensure that local control over critical central Indiana utilities will continue.

- WHEREAS clause #7:

Citizens responded to the City's request for expressions of interest and engaged in extensive discussions with the City resulting in a Memorandum of Understanding dated March 9, 2010 with that "MOU" being attached to the proposed Ordinance.

Page 3

- WHEREAS clause #1:

The Utility Districts and Citizens have the power under IC 36-1-7 to enter into Interlocal Agreements for the purpose of providing for the administration of the provision of utility services and for the purpose of acquiring, owning, operating and exercising all of the Citizens', the City's and the Utility Districts' powers.

- WHEREAS clause #2:

The City, the Utility Districts and Citizens are political subdivisions under Indiana law and are governed by IC-5-22-22, 36-1-7, and 36-1-11.

- WHEREAS clause #3:
The City County Council may create and terminate City departments, divisions, offices and other agencies and transfer the powers, duties, functions and obligations to or from such departments, divisions, offices and agencies.
- WHEREAS clause #4:
The City and Citizens have determined it would be advisable for Citizens to acquire the systems.
- WHEREAS clause #5:
The City will enter into one or more Asset Purchase Agreements ("Definitive Agreements").
- WHEREAS clause #6:
The purchase price and other terms and conditions shall be set forth in the Definitive Agreements consistent with the provisions of the MOU.
- WHEREAS clause #7:
The City has found the transfer and delegation to Citizens of the powers, duties, functions and obligations of the Utility Districts and the sale and transfer and operation of the utility systems to Citizens on the terms and conditions set forth in the MOU and as set forth in the Interlocal Agreements would be in the best interest of the Districts and the proper serving of the inhabitants of the City and communities within Marion County and in furtherance of interlocal cooperation, nearby counties.
- WHEREAS clause #8:
The authority or authorities to be created by the Interlocal Agreements will have the following attributes:
 - a. Will be qualified to own, operate and finance the utility systems;

Page 4

- b. Will be organized as a not-for-profit corporation;
- c. Will be governed by a Board of Directors, the members of which shall be individually appointed by the Board of Trustees for Utilities of the Department of Public Utilities of the City;
- d. Will be authorized to operate utility systems through the employees of Citizens;
- e. Will have all the powers of Citizens, the Utility Districts and the City;
- f. Will be a "qualified entity" under IC-5-1.4-1-10;
- g. Will be an "issuer" under IC-5-1-14-4(a);

- h. Will meet the definition of an eligible borrower under applicable environmental requirements;
- i. Will meet the State Revolving Funds/U.S. E.P.A. definition of a qualified owner/operator; and
- j. Will have the same power and authority with respect to debt, bond and other financing as set forth in the Interlocal Agreement.

Page 4:

- WHEREAS clause #1:

The City and the Utility Districts have the authority to sell and transfer the utility systems to Citizens under Indiana law, including without limitation pursuant to the following:

- a. The City, Utility Districts and Citizens as governed by IC 36-1-11;
- b. The City, the Utility Districts and Citizens are each governmental entities under IC 36-1-11-8;
- c. The City, Utility Districts and Citizens are each governmental bodies under IC 5-22-22.;
- d. IC 5-22-22-10 provides that the City, Utility Districts and Citizens has the authority to transfer or exchange property;

Page 5

- e. The other provisions of IC 5-22-22 for disposal of property do not apply.
- f. IC 36-1-11-8 provides that the City, the Utility Districts and Citizens has the authority to transfer or exchange property;
- g. The other provisions of IC 36-1-11 for disposal of property do not apply;
- h. IC 36-1-7 provides the authority to transfer the utility systems without compliance with any other statute;

Page 6

- WHEREAS clause #1:

Citizens acquisition of the utility systems will be as a going concern as part of an integrated transaction involving both systems.

- WHEREAS clause #2:

Citizens acquisition of the systems provides a unique opportunity otherwise unavailable to the residents of the City.

- WHEREAS clause #3:
Based on the due diligence completed, the following has been demonstrated:
 - A. The utility systems are synergistic with the existing operations of Citizens;
 - B. Similarities between current operations of Citizens and utility systems provide the opportunity to reduce operating cost; and
 - C. Acquisition by Citizens preserve local ownership;
- WHEREAS clause #4:
IC 36-8-2-4 permits the City to regulate conduct or use of property that may endanger public health, safety and welfare;
- WHEREAS clause #5:
IC 36-8-2-7 permits the City to regulate any business use of a water course;
- WHEREAS clause #6:
IC 36-8-2-8 permits the City to regulate introduction of any substance or odor into the air;
- WHEREAS clause #7:
IC 36-9-2-8 permits the City to establish, vacate, maintain and control water courses;
- WHEREAS clause *8:
IC 36-9-2-10 permits the City to regulate the taking of water or closing or permitting to escape from a water course;

Page 6:

- WHEREAS clause #1:
IC 36-9-2-11 permits the City to regulate conduct that might alter the temperature of water or affect the flow of water;
- WHEREAS clause #2:
IC 36-9-2-12 permits the City to regulate the introduction of any substance into a water course;
- WHEREAS clause #3:
IC 36-9-2-16 permits the City to regulate the furnishing of the service of collecting, processing and disposing of waste substances;
- WHEREAS clause #4:
IC 36-1-3 authorizes the City to exercise home rule powers;

- WHEREAS clause #5:

The City County Council desires to provide a preliminary approval of the sale of the utility systems to Citizens subject to the adoption of an ordinance confirming that the Definitive Agreements are consistent with the terms of the MOU and approving the execution of the Definitive Agreements.

Section 1

- A committee of the CCC to be called the "Utility Transfer Oversight Committee" is created with the following purposes:
 - To review the Definitive Agreements and to consider the Approving Ordinance;
 - The President of the CCC shall appoint six (6) counselors to the Committee and the minority leader of the CCC shall appoint five (5) counselors.

Section 2

- The CCC approves the MOU
- Upon the adoption of the Approving Ordinance, the sale and transfer of the Systems to Citizens are hereby approved:
 - Subject to the satisfaction of the terms and conditions set forth in the Ordinance, the Interlocal Agreements and the MOU and all required governmental approvals.

Section 3

- The CCC approves the substantially final form of Interlocal Agreements;
- Upon the adoption of the Approving Ordinance, the Mayor and all other appropriate officers and employees of the City and the Districts are authorized to execute and deliver the Interlocal Agreements and to take all actions and execute all documents necessary and appropriate.

Section 4

- Upon the adoption of the Approving Ordinance, the CCC authorizes the Mayor and other appropriate officers to take all actions and execute all documents necessary to provide for the sale of the Systems as provided in the Ordinance.

Page 7

Section 5

- Upon the adoption of the Approving Ordinance, the transfer and sale of the Systems as set forth herein, the MOU, the Definitive Agreements and the Interlocal Agreements constitute an irrevocable action on the part of the CCC.

Section 6

- Adoption of the Ordinance constitutes a specific manner for exercising home rule.

Section 7

- The Corporation Counsel shall prepare amendments to the Revised Code of the City to incorporate the effect of the Transfer Ordinance.

Section 8

- The provisions of the Ordinance are severable.

Section 9

- The Ordinance shall be in full force and effect upon compliance with IC 36-3-4-14.
-

Summary of the PILOT Bond Ordinance

The PILOT Revenue Bond Ordinance accomplishes the following:

1. Authorizes the issuance and sale of Revenue Bonds of the City to obtain funds to be applied to the cost of infrastructure improvements;
2. Appropriates the proceeds from the sale of the Bonds;
3. Modifies the amount of PILOT payable by the Sanitary District and establishes the terms and conditions of such payments.

Page 1:

- WHEREAS clause #1:

The City currently maintains and operates public roads and streets;

- WHEREAS clause #2:

Whereas the Board of Public Works has filed with the City County Council its resolution showing the costs of required infrastructure improvements (the "Project") and finding the need for the issuance of bonds to finance the project.

- WHEREAS clause #3:

The Project and the financing of the Project are authorized by IC 5-1-14-5 and IC 36-3-4-21.

- WHEREAS clause #4:

The City does not have sufficient funds available for the cost of the Project and the cost of issuance of the Bonds requiring issuance of revenue bonds of the City payable from PILOT paid by the Sanitary District in excess of the amounts currently paid and devoted to public safety purposes.

- WHEREAS clause #5:

A necessity exists for the making of the additional appropriation.

Page 2:

- WHEREAS clause #1:

The proceeds of the bonds and/or bond anticipation notes ("BANs") have not been included in any budget.

- WHEREAS clause #2:

A notice of hearing on such appropriation has been published.

- WHEREAS clause #3:

A "qualified entity" may issue and sell bonds or notes to the Indianapolis Bond Bank.

- WHEREAS clause #4:

The Executive Director of the Bond Bank has indicated a willingness to purchase the bonds by negotiated sale.

- WHEREAS clause #5:

The City and the Sanitary District own and operate the City's wastewater works facilities.

- WHEREAS clause #6:

The wastewater facilities are exempt from property taxes.

- WHEREAS clause #7:

IC 36-3-2-10 authorizes the City County Council to impose PILOT.

- WHEREAS clause #8:

Whereas the maximum amount of PILOT is the amount of taxes that would be paid if the wastewater facilities were not exempt from taxation.

- WHEREAS clause #9:

The tangible property subject to PILOT payments includes both tangible property owned or leased by the Sanitary District.

- WHEREAS clause #10:

Whereas the assessor of Marion County is required to assess Sanitary District property in an amount that does not exceed the amount of property taxes that would have been assessed if the property were not subject to an exemption.

- WHEREAS clause #11:

PILOT received by the City must be deposited in the consolidated County funds and may be used for any purpose of the fund.

Page 3

- WHEREAS clause #1:

Wastewater facilities are currently undergoing substantial improvements which will increase the assessed value of the tangible property.

- WHEREAS clause #2:

The City County Council desires to modify the PILOT received from the Sanitary District.

- WHEREAS clause #3:

The City County Council desires to express the official intent of the City to reimburse preliminary expenses from the proceeds of the bonds.

Section 1

- The City is authorized to make a loan for the purpose of providing funds to be applied to the cost of the Project.

Section 2

- The City is authorized and directed to sell its negotiable "Transportation Revenue Bonds" in an amount not to exceed \$189,000,000.
- The latest maturity on the bonds will be January 1, 2040.

Section 3

- The City is authorized to issue and sell BANs (Bond Anticipation Notes)

Page 4

Section 4

- A registrar and paying agent for the Bonds and the BANs shall be appointed by the Controller of the City.
- The City Controller is authorized and directed to enter into such agreements with the registrar and paying agent necessary for the performance of its duties and responsibilities
- The City Controller shall be designated as the registrar and paying agent for the BANs.
- Details relating to the payment of principal of the bonds and the BANs

Page 5

- Bonds and BANs may be issued and held in book entry form and the details of such book entry.

Page 6

Section 5

- Each bond shall bear an original date and date of authentication.
- Details relating to the interest payment date.

Page 7

Section 6

A. Bonds may be aggregated into one or more term bonds payable from mandatory sinking fund redemption payments

- Details relating to the term bonds

B. The City Controller, based upon the advice of the financial adviser of the City shall certify in a Controller's Certificate the terms upon which the bond shall be subject to redemption at the option of the City.

- Details relating to the notice of redemption

Section 7

- Details of the transfer and exchange of the bonds.
- Handling of mutilated, lost, stolen or destroyed bonds.

Page 10

Section 8

- Details relating to the execution of the bonds and the BANs

Section 9

- The form and tenor of the bonds

Section 10

A. Authorization of the City Controller to sell the bonds to the Bond Bank and to enter into a Qualifying Entity Purchase Agreement with the Bond Bank.

B. Details of the public sale of the bonds.

Section 11

- The authority of the Mayor to execute the bonds and the BANs and of the City Controller to have such bonds and BANs prepared.

Section 12

- The ability of any series of the bonds to be issued as "Build America Bonds" or "Recovery Zone Economic Development Bonds."

Section 13

- The authorization of the Mayor and the City Controller to prepare, execute and deliver any and all instruments and documents determined to be necessary and appropriate to consummate the bond transaction contemplated by the Ordinance.

Section 14

- The bonds should be valid and binding special revenue obligations of the City payable solely out of the PILOT revenues paid to the City.

Section 15

- The designation of the "PILOT Account" and the distribution of the PILOT revenues into:
 1. Bond principal and interest account;
 2. Reserve account;
 3. Excess account.
- A detailed description of the uses and limitations of each account.

Page 20

Section 16

- The handling of any accrued interest and premium received at the time and delivery of the bonds.
- The handling of any debt service reserve fund surety bond.
- The designation of the "2010 City of Indianapolis Road and Street Project Construction Fund."

Section 17

- Provisions of the Ordinance shall be construed to create a trust and the proceeds of the sale of the bonds for the use and purposes set forth in the Ordinance.

Section 18

- Provisions relating to the defeasance of the bonds.

Page 21

Section 19

- Provisions relating to requirements to maintain the bonds as tax exempt.

Section 20

- Provision relating to not needing to comply with the provisions of the Ordinance relating to tax exemption if an opinion of Bond Counsel provides that such compliance is not necessary.

Section 21

- Actions that the Council may take without the consent of or notice to bond holders.

Section 22

- Provisions relating to modifications requiring the consent of 60% of the owners of the bonds.

Section 23

- The irrevocable pledge of the PILOT revenues distributed to the City.

Section 24

- The right to authorize and issue additional bonds and the terms and conditions for the issuance of such bonds on a parity basis

Section 25

- The City Controller shall set forth in the Controller's Certificate the first payment date for the bonds, the amount and maturities of the bonds, the percentage of par at which the bonds will be sold and any other matters required by the ordinance.
- If the bonds are sold by public sale, the requirement of an official statement and details of the issuance of the official statement

Section 26

- The ability to reduce the amount of the bonds to assure that the constitutional debt limitation of the City is not exceeded.

Section 27

- Provisions relating to the appropriation of the bond proceeds.

Section 28

- The finding that the amount of the PILOT currently paid by the Sanitary District is less than the amount that would have been levied against the taxable and tangible property if the tangible property of the Sanitary District were not exempt from property taxation.
- A modified schedule of PILOT payments to be made by the Sanitary District.

Section 29

- All PILOT payments should be deposited into the consolidated County fund.

Section 30

- The PILOT payment shall be made on January 1st and December 1st.

Section 31

- PILOT payments may be made by the Sanitary District only from cash earnings of the facility remaining after provisions have been made to pay for current obligations.

Section 32

- If the payment date falls on a weekend or holiday, such payment shall be made on the next business day.

Section 33

- The Ordinance serves as the declaration of the official intent of the City to reimburse preliminary expenses relating to the Project.

Section 34

- The provisions of the Ordinance are severable.

Section 35

- The Ordinance shall be in full force and effect from and upon compliance with the procedures required by law.

MOTION TO AMEND
Proposal No. 131, 2010

Mr. Chairman:

I respectfully move to amend Proposal No. 131, 2010, by the substitution of the following language for that which appears in the Proposal.

Councillor

CITY-COUNTY SPECIAL ORDINANCE NO. _____, 2010
PROPOSAL NO. 131, 2010

A PROPOSAL FOR A SPECIAL ORDINANCE authorizing the transfer of the waterworks and the sewage works of the city of Indianapolis, Indiana, and certain related matters,

Witnesseth that:

WHEREAS, the City of Indianapolis, Indiana (the "City") and the Sanitary District of the City of Indianapolis (the "Sanitary District"), acting by and through the board of public works, ("Board of Public Works"), the governing body of the City's Department of Public Works, own and operate, pursuant to the provisions of Indiana Code 36-9-25 and related statutes, a wastewater collection and treatment system, including without limitation, the Belmont and Southport wastewater treatment facilities (the "Wastewater System"); and

WHEREAS, the City and the Waterworks District of the City (the "Waterworks District" and collectively, with the Sanitary District, the "Districts"), acting by and through the board of directors ("Waterworks Board" and collectively with the Board of Public Works, the "Utility Boards"), the governing body of the City's Department of Waterworks, own and operate, pursuant to the provisions of Indiana Code 8-1.5-4 and related statutes, a water system (the "Water System" and collectively with the Wastewater System, the "Systems"); and

WHEREAS, the City recognizes the impact Wastewater System operations have on the quality of water in Indianapolis rivers, streams and aquifers and has therefore determined that an integrated watershed-wide effort is necessary to achieve the ultimate water quality goals of the City; and

WHEREAS, such an integrated effort will (i) complement control measures being undertaken to ensure compliance with water quality based requirements of environmental laws, such as the Clean Water Act; and (ii) enhance the ability to maintain the quality of the City's water supply in accordance with requirements such as Indiana's water quality standards and National Pollutant Discharge Elimination System permits; and

WHEREAS, studies have shown that (i) issues related to urban water supply and demand should not be considered independently of issues related to wastewater disposal and water reuse; and (ii) water management strategies and opportunities for water reuse can only be properly evaluated in the context of their interactions with the overall waterworks system; and

WHEREAS, the U.S. Environmental Protection Agency has recognized that ensuring a sustainable water supply and infrastructure is a top national priority and has led collaborative efforts to integrate the management systems for water and wastewater operations, such as establishment of the Sustainable Water Infrastructure Initiative designed to ensure that all components of our nation's water infrastructure are capable of meeting future needs; and

WHEREAS, other governmental entities have recognized the benefits of structuring integrated management systems that are responsible for the efficient and environmentally responsible provision of drinking water, wastewater collection and treatment and water and wastewater transportation services to residents of their communities; and

WHEREAS, the Department of Public Utilities of the City of Indianapolis, acting by and through the Board of Directors for Utilities (and on behalf of the utility special taxing district by the Board of Directors for Utilities and all of the existing or future divisions and affiliates, including but not limited to the affiliate designees referred to in the MOU (as defined herein), and the affiliates created pursuant to the Interlocal Agreements (as defined herein), pursuant to which the Board of Directors for Utilities holds or will hold assets in public charitable trust for the benefit of its utility customers and the inhabitants of the City) (collectively, "Citizens") is vested by Indiana Code 8-1-11.1 with the power to own and operate utility properties of any kind within the City, or outside the City within the limits authorized by law, and to own all utility property related or belonging thereto; and

WHEREAS, Citizens currently provides local gas distribution services to the City and the residents of Marion County, Indiana ("Citizens Gas"), and in conjunction therewith owns and operates a steam production, transmission and distribution plant and a chilled water production and distribution plant for the provision of steam service and chilled water in the downtown areas and near downtown areas of the City ("Citizens Thermal"), and through its direct and indirect affiliates engages in other energy-related ventures; and

WHEREAS, the City issued a Request for Expression of Interest regarding integration of the Systems into a combined operation, as it explored ways to achieve operating efficiencies, to improve customer service, to keep customer rates as low as possible and to raise capital to fund important City infrastructure needs; and

WHEREAS, Citizens investigated and continues to investigate and study ways in which it may more efficiently and effectively provide service to its customers and otherwise satisfy the purposes of providing utility services in public charitable trust to its utility customers and the inhabitants of the City; and

WHEREAS, Citizens has determined that the combined operation by Citizens of the Systems, Citizens Gas and Citizens Thermal will result in operating and capital project synergies for the benefit of the City and its inhabitants, thus resulting in lower rates for all utility customers than would otherwise result in the absence of such combined operation; and

WHEREAS, Citizens' unique structure will ensure that local control over critical Central Indiana utilities will continue with the same invulnerability to takeover by distant companies and investors that has protected the utilities held by Citizens in public charitable trust for over one hundred years and will also ensure local reinvestment and community-based decision making; and

WHEREAS, Citizens responded to the City's Request for Expression of Interest and engaged in extensive discussions with the City, which resulted in the City and Citizens entering into a Memorandum of Understanding, dated March 9, 2010, in the form attached hereto as "Exhibit A" and incorporated by reference herein (the "MOU") which, among other provisions, provides for the acquisition by Citizens of all real and personal property, all cash and cash equivalents, all contracts, licenses and leases, and all intellectual property used, necessary or important in the operation of the Systems, unless otherwise excluded by mutual agreement and sets forth the terms and conditions which must be satisfied before any such transaction may proceed; and

WHEREAS, the City, the Districts and Citizens have the power under Indiana Code 36-1-7 to enter into and have determined that it would be advisable to enter into to one or more Interlocal Cooperation Agreements for the Provision of Utility Services (the "Interlocal Agreements") in substantially the forms attached hereto as

"Exhibit B," including the creation of an affiliate of Citizens consisting of a separate legal entity organized as an Indiana nonprofit corporation and controlled by Citizens ("Authority") for the purpose of providing for the administration of an Interlocal Agreement through the Authority or by delegation to Citizens and for the purpose of acquiring, owning, operating and exercising all of Citizens', the City's and the Districts' powers that are necessary, useful or appropriate to the acquisition, ownership and operation of the Systems; and

WHEREAS, each of the City, the Districts and Citizens are political subdivisions under Indiana Code 36-1-2-13 and are therefore governed by Indiana Code 5-22-22, 36-1-7 and 36-1-11; and

WHEREAS, the City-County Council of the Consolidated City of Indianapolis and Marion County (the "City-County Council") may create and terminate City departments, divisions, offices and other agencies and, except as otherwise provided by law, transfer the powers, duties, functions and obligations to or from such departments, divisions offices and agencies; and

WHEREAS, the City and Citizens have determined that it would be advisable for Citizens to acquire the Systems in order to achieve the benefits of integration and operating synergies described above; and

WHEREAS, the City will enter into one or more Asset Purchase Agreements (collectively, the "Definitive Agreements") with Citizens providing for the acquisition by Citizens of the Systems; and

WHEREAS, the purchase price and other terms and conditions upon which Citizens will acquire the Systems, shall be as set forth in one or more Definitive Agreements, consistent with the provisions of the MOU; and

WHEREAS, the City has found the transfer and delegation to, and vesting in and exercising by Citizens, of all of the powers, duties, functions and obligations of the Districts that are necessary, useful or appropriate to the acquisition, ownership and operation of the Systems and the sale and transfer and operation of the Systems to Citizens on the terms and conditions set forth in the MOU and as set forth in the Interlocal Agreements would be expedient and in the best interests of the Districts, and the proper serving of the inhabitants of the City and communities within Marion County and, in furtherance of interlocal cooperation, nearby counties; and

WHEREAS, the Authority:

- a. will be qualified to own, operate and finance the Systems under various federal and state statutes or regulations;
- b. will be organized as a nonprofit corporation under the Indiana Nonprofit Corporation Act of 1991, as amended, Indiana Code 23-17, et. seq., and will be exempt from federal taxation;
- c. will be governed by a Board of Directors, the members of which shall be those individuals who are appointed by the Board of Trustees for Utilities of the Department of Public Utilities of the City, from time to time in the manner set forth in Indiana Code 8-1-11.1-1, as members of the board of directors for utilities of Citizens;
- d. will be authorized to operate the Systems through the employees of Citizens and others;
- e. will have all of the powers of Citizens, the District and the City which are necessary, useful or appropriate for the acquisition, ownership and operation of the Systems;
- f. will be a "qualified entity" under Indiana Code 5-1.4-1-10;
- g. will be an "issuer" under Indiana Code 5-1-14-4(a);
- h. will meet the definition of an eligible borrower under applicable environmental requirements;
- i. will meet the State Revolving Fund/U.S. Environmental Protection Agency definition of a qualified

owner/operator; and

- j. will have the same power and authority with respect to debt, bond and other financing as set forth in the Interlocal Agreement; and

WHEREAS, the City and the Districts have the authority to sell and transfer the Systems to Citizens under Indiana law, including without limitation pursuant to the following:

- a. each of the City, the Districts, and Citizens is governed by Indiana Code 36-1-11 because each is a political subdivision;
- b. each of the City, the Districts, and Citizens is a governmental entity under Indiana Code 36-1-11-8;
- c. each of the City, the Districts, and Citizens is a governmental body under Indiana Code 5-22-22;
- d. Indiana Code 5-22-22-10 provides each of the City, the Districts, and Citizens with the authority to transfer or exchange property and establishes a process for doing so;
- e. the other provisions of Indiana Code 5-22-22 for disposal do not apply because Indiana Code 5-22-22-10 provides an independent process from those other requirements;
- f. Indiana Code 36-1-11-8 provides each of the City, the Districts, and Citizens with the authority to transfer or exchange property and establishes a process for doing so;
- g. the other provisions of Indiana Code 36-1-11 for disposal do not apply because Indiana Code 36-1-11-8 provides an independent process from those other requirements;
- h. Indiana Code 36-1-7 specifically provides the authority to transfer the Systems, without compliance with any other statute; and

WHEREAS, Citizens' acquisition of each of the Systems will be as a going concern and as part of an integrated transaction involving both Systems, with each part dependent on the other; and

WHEREAS, Citizens' acquisition of the Systems presents a unique opportunity the benefits of which are not otherwise available to the residents of the City, unless the acquisition is made by Citizens; and

WHEREAS, based on the due diligence completed through the effective date of this ordinance, the due diligence demonstrates:

- a. The Systems are synergistic with existing operations and position Citizens as a provider of a broader range of services;
- b. similarities between current operations of Citizens and the Systems provide opportunities to reduce operating costs; and
- c. acquisition by Citizens preserves local ownership of the Systems; and

WHEREAS, IC 36-8-2-4 permits the City to regulate conduct, or use or possession of property, that might endanger the public health, safety, or welfare; and

WHEREAS, IC 36-8-2-7 permits the City to regulate any business use of a watercourse; and

WHEREAS, IC 36-8-2-8 permits the City to regulate the introduction of any substance or odor into the air, or any generation of sound; and

WHEREAS, IC 36-9-2-8 permits the City to establish, vacate, maintain, and control watercourses;

and

WHEREAS, IC 36-9-2-10 permits the City to regulate the taking of water, or causing or permitting water to escape, from a watercourse; and

WHEREAS, IC 36-9-2-11 permits the City to regulate conduct that might alter the temperature of water, or affect the flow of water, in a watercourse; and

WHEREAS, IC 36-9-2-12 permits the City to regulate the introduction of any substance into a watercourse or onto its banks; and

WHEREAS, IC 36-9-2-16 permits the City to regulate the furnishing of the service of collecting, processing, and disposing of waste substances and domestic or sanitary sewage; and

WHEREAS, IC 36-1-3 authorizes the City to exercise Home Rule powers; and

WHEREAS, the City-County Council desires to provide a preliminary approval of the sale of the Systems to Citizens and related actions subject to the adoption of an ordinance confirming that the Definitive Agreements are consistent with the terms of the MOU and approving the execution of the Definitive Agreements (the "Approving Ordinance"); now, therefore:

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA;

SECTION 1. Pursuant to IC 36-3-4-18(a)(6), there is hereby created a committee of the City-County Council to be called the "Utility Transfer Oversight Committee" which shall have as its purpose to review the Definitive Agreements and to consider the Approving Ordinance. The President of the City-County Council shall appoint six (6) councillors to the committee and the Minority Leader shall appoint five (5) councillors to the committee.

SECTION 2. The City-County Council hereby approves the MOU. Upon the adoption of the Approving Ordinance, the sale and transfer of the Systems to Citizens are hereby approved, subject to the satisfaction of the terms and conditions set forth in this ordinance, the Interlocal Agreements, and the MOU and subject to all required governmental approvals. This ordinance is deemed to be a resolution for purposes of IC 5-22-22-10 and IC 36-1-11-8.

SECTION 3. The City-County Council hereby approves the substantially final form of the Interlocal Agreements attached hereto. Upon the adoption of the Approving Ordinance, the Mayor and all other appropriate officers and employees of the City and the Districts are hereby authorized to execute and deliver the Interlocal Agreements (with such changes as the officers executing the Interlocal Agreements deem appropriate and the approval of the Corporation Counsel as to form and legality) and to take all actions and execute all documents necessary and appropriate to vest in Citizens or the Authority the requisite power and authority to consummate the transactions proposed herein.

SECTION 4. Upon the adoption of the Approving Ordinance, the City-County Council hereby authorizes the Mayor and other appropriate officers and employees of the City and the Districts to take all actions and execute all documents necessary to provide for the sale of the Systems as provided herein.

SECTION 5. Upon the adoption of the Approving Ordinance, the transfer and sale of the Systems as set forth herein, the MOU, the Definitive Agreements and the Interlocal Agreements constitute an irrevocable action on the part of the City-County Council and such transfer and sale constitute an irrevocable pledge of such property for purposes set forth herein pursuant to Indiana Code 5-1-14.

SECTION 6. The adoption of this ordinance constitutes the specific manner for exercising Home Rule power in accordance with IC 36-1-3-6.

SECTION 7. The Corporation Counsel shall review the Revised Code and prepare any necessary

proposals to amend the Revised Code to recognize the effect of the transfer of the Systems and, after the adoption of the Approving Ordinance, shall refer such proposals to the Clerk of the City-County Council for consideration. If any changes to the Revised Code are proper to include in the Approving Ordinance, the Corporation Counsel shall ensure that such changes are provided to the Clerk for inclusion therein.

SECTION 8. If any section, paragraph or provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this ordinance. The provisions of this ordinance are severable.

SECTION 9. This ordinance shall be in full force and effect from and upon compliance with IC 36-3-4-14, and all ordinances in conflict herewith are hereby repealed to the extent of such conflict.

EXHIBIT A

MEMORANDUM OF UNDERSTANDING

EXHIBIT B

INTERLOCAL AGREEMENTS